Supreme Court, U.S.
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No. 01-1583

IN THE

Supreme Court of the United States

ROBERT THURLWELL,

Petitioner,

v.

WALT DISNEY PICTURES AND TELEVISION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

WILLIAM L. COLE
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064
(310) 312-2000

Attorneys for Respondent

174135

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Respondent Walt Disney Pictures and Television is a wholly owned subsidiary of Disney Enterprises, Inc. Disney Enterprises, Inc. is a wholly owned subsidiary of The Walt Disney Company, which is a publicly traded company.

REASONS FOR DENYING THE WRIT

A. THE COURT BELOW CORRECTLY APPLIED WELL-ESTABLISHED PRECEDENT AND THERE IS NO CONFLICT BETWEEN THE CIRCUITS.

This is an ordinary hybrid Section 301 action in which a jury found that the union involved had breached its duty of fair representation by failing to investigate a grievance, but that the employer, Respondent Walt Disney Pictures and Television, had *not* breached the collective bargaining agreement when it removed Petitioner from its Studio Seniority Roster. Contrary to Petitioner's assertion, the Ninth Circuit Court of Appeals and the District Court below followed the well-established precedent applicable to such hybrid actions. This Court's cases uniformly hold that an employer cannot be held liable unless the employee establishes *both* that the union breached its duty of fair representation *and* that the employer breached the collective bargaining agreement. *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 451, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983); *United States Postal Service, Inc. v. Mitchell*, 451 U.S. 56, 101 S. Ct. 1559, 67 L. Ed. 2d 732 (1981); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 96 S. Ct. 1048, 47 L. Ed. 2d 231 (1976). Petitioner failed to prove that Respondent breached the collective bargaining agreement and, therefore, judgment was properly entered in favor of Respondent.

In *DelCostello*, *supra*, this Court succinctly stated the rules applicable to a claim asserted by an individual employee under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, seeking to establish that his employer breached a collective bargaining agreement:

> Such a suit, as a formal matter, comprises two causes of action. The suit against the employer rests on § 301, since the employee is alleging a breach of the collective-bargaining agreement. The suit against the union is one for breach of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. [footnote omitted] "Yet the two claims are inextricably interdependent. 'To prevail against either the company or the Union, . . . [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.'" *Mitchell, supra,* 451 U.S., at 66-67, 101 S. Ct., at 1565-1566 (Stewart, J., concurring in judgment), quoting *Hines, supra*, 424 U.S., at 570-571, 96 S. Ct., at 1059. The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.

462 U.S., at 164-165; 103 S. Ct., at 2290-2291.

Petitioner seeks to stand this rule on its head. He asserts that because he was able to convince the jury that the union breached its duty of fair representation, Respondent should be held liable for breach of the collective bargaining agreement. This is untenable. The jury expressly found that Respondent had not breached the collective bargaining agreement and, therefore, Petitioner failed to carry the burden set forth in *DelCostello*.

None of the cases cited in the Petition supports Petitioner's position. Rather, each of them states the general rule quoted above that in order to prevail against the employer in a hybrid Section 301 action, the employee must prove both a breach of the duty of fair representation by the union and a breach of the collective bargaining agreement by the employer. *Livingston v. Schnuck Market, Inc.*, 950 F.2d 579 (8th Cir. 1991); *White v. White Rose Food*, 237 F.3d 173 (2d Cir. 2001); *Crider v. Spectrulite Consortium, Inc.*, 130 F.3d 1238 (7th Cir. 1997); *Roeder v. American Postal Workers Union, AFL-CIO*, 180 F.3d 733 (6th Cir. 1999). There simply is no authority that supports Petitioner's contention and, therefore, no conflict between the Circuits.

B. THE SPECIAL VERDICT FORM UTILIZED BY THE DISTRICT COURT WAS PROPER IN ALL RESPECTS.

In his appeal to the Ninth Circuit, Petitioner contended that the District Court had erred in submitting special verdict question number three (3) to the jury. That question asked:

> Do you find from a preponderance of the evidence that plaintiff received authorization from Walt Disney Pictures and Television to take a leave of absence in order to work on "Beverly Hills 90210" without losing his Disney seniority?

The Ninth Circuit correctly ruled that this question was properly included in the special verdict form. App. 2. Petitioner contends that the question was improper either because it is inconsistent with a finding that the union breached its duty of fair representation or because his voluntary decision to go to work for another employer

without obtaining Respondent's permission did not justify removing Petitioner from the seniority roster. Both contentions are without merit.

At trial, Petitioner contended that the union had done no investigation of his grievance at all and that by such arbitrary conduct, the union had breached its duty of fair representation. The jury agreed and therefore answered special verdict question number one (1) in the affirmative. App. 5. This finding did not, however, establish that Respondent had violated the collective bargaining agreement. It only established that the union had arbitrarily or in bad faith failed to investigate the claim.

The collective bargaining agreement at issue expressly provided that an employee could be removed from the studio seniority roster if he voluntarily resigned *or* if he took an unauthorized leave of absence. By answering "no" to special verdict question number 3, the jury found that Petitioner had taken an unauthorized leave of absence. As the Ninth Circuit held, "The record contains more than sufficient evidence to support the jury's verdict." App. 2. Accordingly, Respondent had the contractual right to remove Petitioner from its studio seniority roster and Petitioner's breach of contract claim failed.[1]

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1. Because Petitioner settled with the union and the union withdrew its appeal, this case does not raise the question of whether the union was properly held liable for a breach of the duty of fair representation where Petitioner failed to establish a breach of collective bargaining agreement by the employer.

CONCLUSION

For the reasons and on the authorities set forth above, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

WILLIAM L. COLE
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064
(310) 312-2000

Attorneys for Respondent